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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/869,094 | 09/18/2001 | Gervasio Mercuri | 2217/50147 | 1011 |

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EXAMINER

SIMONE, CATHERINE A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 01/15/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | | |
|-------------------------------|-----------------------------------|--|
| Application No. 09/869,094 | Applicant(s) MERCURI, GERVASIO | |
| Examiner Catherine Simone | Art Unit 1772 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 45-66** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations “circumferential threads,” “spaced at intervals along said tubular casing,” “an elastic thread in combination with a yarn wrapped around and along a length of said elastic thread,” “wherein a limited number of turns of said yarn are provided around said elastic thread for a given length of said circumferential threads” and “a predetermined amount of stretch due to said yarn being straightened to an extent where said yarn resists tensile force whereupon said circumferential threads become inextensible” in claim 45 are deemed vague and indefinite. Clarification is requested.

The recitation “located within and co-extensive with said tubular net” in claim 48 is deemed vague and indefinite. Clarification is requested.

The recitations “being secured to” and “still being” in claim 54 are deemed vague and indefinite. Appropriate correction is required.

The recitation “is being” in claim 55 is deemed vague and indefinite. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 45-52, 54-58 and 63-66** are rejected under 35 U.S.C. 102(b) as being anticipated by Mintz et al. (5,413,148).

Mintz et al. discloses a tubular casing for use with food products comprising circumferential threads (Fig. 1, #7) extending around a periphery of the tubular casing and spaced at intervals along the tubular casing, the circumferential threads comprising an elastic thread in combination with a yarn wrapped around and along a length of the elastic thread (see col. 4, lines 32-34), wherein a limited number of turns of said yarn are provided around the elastic thread for a given length of the circumferential threads so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the circumferential threads become inextensible. Regarding **claim 46**, note a knitted tube with the circumferential threads attached to the knitted tube (see col. 2, lines 60-68). Regarding **claims 47, 56 and 63**, the tubular casing is a tubular net comprising radially spaced longitudinal threads (Fig. 1, #5) in combination with the circumferential threads (Fig. 1, #7) and wherein the circumferential threads (Fig. 1, #7) comprise a continuous thread extending spirally along said tubular casing, the longitudinal threads (Fig. 2, #5) comprise interlocking loop stitches, each loop stitch extending between the circumferential threads (Fig. 2, #7). Regarding **claim 48**, note a tubular fibrous casing (Fig. 5, #3; also see col. 3,

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lines 37-45) located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Regarding **claim 49**, the circumferential threads become taut at a diameter which is substantially equal to the diameter of the tubular fibrous casing when it is filled (see col. 4, lines 35-52). Regarding **claims 50-52 and 58**, note the diameter of the tubular fibrous casing is greater than the diameter of the tubular net prior to stretching of the circumferential threads so that the circumferential threads apply compressive force to the fibrous casing as it is being filled (see col. 5, lines 19-24). Regarding **claim 54**, note the tubular casing is a knitted tube that is stretchable and impermeable to the food products and longitudinal threads (Fig. 1, #5) in combination with the circumferential threads (Fig. 1, #7), the circumferential and longitudinal threads being secured to and spaced, respectively, along and around the knitted tube, the knitted tube still being stretchable when the circumferential threads become taut so that the circumferential and longitudinal threads press into a surface of the food product so that a quilted surface pattern is applied to the surface of the food products in contact with the tubular casing (see col. 6, lines 10-18). Regarding **claims 55, 57 and 64-66**, note the circumferential and longitudinal threads are secured to an outer surface of the knitted tube (see Fig. 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 53 and 59-62** rejected under 35 U.S.C. 103(a) as being unpatentable over Mintz et al. (5,413,148) in view of Mintz (5,855,231).

Mintz et al. discloses a tubular casing for use with food products comprising circumferential threads (Fig. 1, #7) extending around a periphery of the tubular casing and spaced at intervals along the tubular casing, the circumferential threads comprising an elastic thread in combination with a yarn wrapped around and along a length of the elastic thread (see col. 4, lines 32-34), wherein a limited number of turns of said yarn are provided around the elastic thread for a given length of the circumferential threads so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the circumferential threads become inextensible. However, Mintz et al. (5,413,148) fails to disclose the fibrous casing having at least one pleat. Mintz (5,855,231) teaches in the analogous art a fibrous casing having at least one pleat (Fig. 7, #44) for the purpose of locating the fibrous casing within the tubular net.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the fibrous casing in Mintz et al. (5,413,148) with at least one pleat as suggested by Mintz (5,855,231) in order to locate the fibrous casing within the tubular net.

Response to Arguments

8. Applicant's arguments with respect to claims 45-66 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

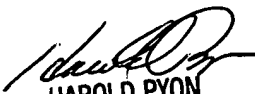
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Catherine Simone
Examiner
Art Unit 1772

January 3, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

1/10/03